IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4778 of 2006
With
SPECIAL CIVIL APPLICATION No. 4781 of 2006
To
SPECIAL CIVIL APPLICATION No. 4784 of 2006
With
SPECIAL CIVIL APPLICATION No. 4785 of 2006
With
SPECIAL CIVIL APPLICATION No. 4786 of 2006
To
SPECIAL CIVIL APPLICATION No. 4789 of 2006
With
SPECIAL CIVIL APPLICATION No. 8372 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUMANBEN WD/O NAGINBHAI KHUSHALBHAI PATEL & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 36 - Respondent(s)

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Appearance :

MR AJ PATEL WITH MR DEVANG T SHAH for Petitioners:1-5.
MR DIPEN DESAI AGP for Respondent(s) : 1-3,
MR ASIM PANDYA for Respondent Nos.28-37
MR PM THAKKAR WITH PREMAL R JOSHI for Respondent No.4-27

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/04/2006

ORAL JUDGMENT

1.RULE. Mr.Premal Joshi, learned advocate and Mr.Dipen Desai, learned AGP waive the service of rule on behalf of the respondent Nos.4 and State.

2.As the common question of facts and law arise in these petitions, the same are being disposed of by this common judgment and order.

3.With the consent of the parties, all these petitions are taken up for final hearing.

4.Special Civil Application No.4778/2006 with Special Civil Application Nos.4781 to 4784 of 2006 as well as Special Civil Application No.4785/2006 with Special Civil Application No.4786 to 4789 of 2006 are filed by the respective petitioners i.e. Sumanben widow of Nagjibhai Khushalbhai Patel and others challenging the common judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dtd.21/2/2006 in Revision Application Nos.69 and 70 of 2005 in dismissing the same and confirming the order passed by the Collector, Surat dtd.8/4/2005 in RTS Appeal Nos.84 and 88 of 2004 and modifying the same to the extent quashing and setting aside the Mutation Entry Nos.2053, 7875 and 8641 with respect of the land in question directing to mutate the name

of heirs of deceased Khushalbhai Govanbhai.

5.pecial Civil Application No.8372 of 2006 is filed by the petitioners - subsequent purchasers of the land in question named Gopalbhai Laljibhai Mayani challenging the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, dtd.21/2/2006 in Revision Application Nos.69 and 70 which is also subject matter of Special Civil Application No. Nos.4778 and 4785 of 2006 and other cognate matters referred to hereinabove.

6.So far as Special Civil Application Nos.4778 of 2006 with Special Civil Application No.4781 to 4784 of 2006 with Special Civil Application No. No.4785 of 2006 with Special Civil Application No.4786 to 4789 of 2006 with Special Civil Application No. 8372 of 2006 are with respect to the Mutation Entry Nos.2053, 7875, 8641 with

regard to the land bearing Survey No.86, situated at Katargam.

7.It appears from the record that the land bearing Survey No.86 situated at Village Katargam was owned by Khushalbhai Govanbhai and on his death in the year 1958, the name of his minor son Naginbhai Khushalbhai came to be mutated in the revenue record vide Mutation Entry No.2053 dtd.29/3/1959. It appears that said Khushalbhai Govanbhai had 7 daughters and 1 son (Naginbhai). As stated hereinabove, initial entry being Mutation Entry No.2053 was in the name of Naginbhai and thereafter, on his death, the name of his heirs came to be mutated in the revenue record vide Mutation Entry No.7875 dtd.5887. It appears from the record that Kankuben, one of the daughters of deceased Khushalbhai Govanbhai filed Regular Civil Suit No.345 of 1996 in the court of learned Civil Judge (SD), Surat which is

pending. It appears that an Agreement-to-sale came to be entered into by the heirs of Naginbhai and thereafter, the land in question came to be sold in favour of respondent Nos.28 to 37 of Special Civil Application No.4778 of 2006 with Special Civil Application No.4785 of 2006 and other cognate matters i.e. the petitioners of Special Civil Application No.8372 of 2006 by registered sale deed dtd.20/6/1997. The names of the purchasers – aforesaid respondent Nos.28 to 37 and petitioners of Special Civil Application No.8372 of 2006 came to be mutated in the revenue record vide Mutation Entry No.8641 dtd.16/11/1998. It appears from the record that after a period of 44 years from the date of posting of the Mutation Entry No.2053 dtd.29/3/1959 in the revenue record, Kankuben Kikubhai Patel, one of the daughters of deceased Khushalbhai Govanbhai preferred an appeal before the Dy.Collector, Choryasi Prant,

Surat being RTS Appeal No.234 of 2003. The said Kankuben also challenged Mutation Entry No.8641 dtd.16/12/1998 by way of filing RTS Appeal No.12 of 2004 before the Deputy Collector. The Deputy Collector, Choryasi Prant, Surat vide orders dtd.2/5/2004 and 24/8/2004 dismissed both the aforesaid appeals confirming the Mutation Entry No.7875 dtd.29/3/1959 as well as Mutation Entry No.8641 dtd.16/12/1998. However, directed to mutate the names on the basis of the judgment and decree that may be passed in the Civil Court in Regular Civil Suit No.345 of 1996. Being aggrieved by and dissatisfied with the aforesaid two orders passed by the Deputy Collector, Choryasi Prant, Surat, the said Kankuben preferred two appeals before the Collector, Surat being RTS Appeal Nos.84 and 88 of 2004 and the Collector, Surat by its order dtd.8/4/2005 allowed the both the aforesaid appeals by quashing and setting aside the orders passed by the Deputy Collector,

Choryasi Prant, Surat in RTS Appeal Nos.234 of 2004 and 12 of 2004 and passed an order directing to mutate the names of Khushalbhai Govanbhai by preparing pedigree (Pedhinama). Being aggrieved by and dissatisfied with the order passed by the Collector, Surat dtd.8/4/2005 in RTS Appeal No.84 and 88 of 2004, the petitioners preferred two revision applications before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application Nos.69 and 70 of 2005 and the Principal Secretary (Appeals), Revenue Department, State of Gujarat by its common judgment and order dtd.23/2/2006 dismissed both the revision applications confirming the order passed by the Collector, Surat in RTS Appeal Nos.84 and 88 of 2004. However, modified the said orders to the extent quashing and setting aside the Mutation Entry Nos.2053, 7875 and 8641 with respect to the land in question and directed to initiate the proceedings in

accordance with law and rules and further directed to mutate the name of all the heirs of deceased Khushalbhai Govanbhai. Being aggrieved by and dissatisfied with the order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dtd.23/2/2006 in Revision Application Nos.69 and 70 of 2005, the petitioners have preferred these petitions under Articles 226 sand 227 of the Constitution of India.

8.Similarly, as stated above, the subsequent purchasers of the land in question i.e. respondents Nos.28 to 37 of Special Civil Application No.4778 of 2006 and other cognate matters have also preferred Special Civil Application No.8372 of 2006 as entry being Mutation Entry No.8641 which was made in their favour pursuant to the registered sale deed also came to be set aside by the Principal Secretary (Appeals), Revenue Department, Stat

of Gujarat.

9.Mr.A.J. Patel, learned advocate appears on behalf of the respective petitioners i.e. Sumanben widow of Naginbhai Khushalbhai and others i.e. heirs of Naginbhai Khushalbhai Patel (son). Mr.P.M. Thakkar learned senior advocate appears with Mr.Premal R.Joshi, learned advocate appearing for Kankuben Kikubhai Patel, daughter of Khushalbhai Govanbhai Patel, Mr.Asim Pandya, learned advocate appears on behalf of subsequent purchasers – Gopalbhai Laljibhai Mayani and others. Mr.Dipen Desai learned AGP appears on behalf of State – the Deputy Collector, Choryasi Prant, Surat and Collector, Surat.

10.Mr.AJ Patel, learned advocate appearing on behalf of the respective petitioners i.e. heirs of deceased Naginbhai Khushalbhai Patel has vehemently submitted that the Collector,

Surat as well as the Principal Secretary (Appeals), Revenue Department, State of Gujarat were not justified in quashing and setting aside the Mutation Entry No.2053 which was mutated in the name of Naginbhai son of Khushalbhai in the year 1959 more particularly on 29/3/1959 and more particularly when the said entry came to be challenged by Kankuben after a period of 44 years and the Deputy Collector, Choryasi Prant, Surat was justified in dismissing the appeals preferred by Kankuben and by observing that the necessary entry can be made and/or will be made on the basis of the judgment and decree that may be passed by the learned Civil Judge (Surat) in Regular Civil Suit No.345 of 1996. It is further submitted by him that the Collector, Surat as well as the Secretary (Appeals), both have materially erred in disturbing the orders passed by the Deputy Collector. It is further submitted that in fact Kankuben had

relinquished her right and therefore, she was not having any right, title and/or interest in the land in question and she has no locus to challenge the entry in question. It is also further submitted by him that the authorities below have committed an error in not staying their hands till the suit pending in the Civil Court with respect to the title of the land in question, is finally decided by the Civil Court. It is also further submitted that the authorities below have committed an error in not properly appreciating that the revenue authorities have no jurisdiction to decide the disputed questions of title and only the competent Civil Court has power to decide the dispute between the parties with regard to the title of the lands in question. However, he has submitted that if the entries being Mutation Entry Nos.2053, 7875 and 8641 are continued subject to the ultimate outcome of the Regular Civil Suit No.345 of 1996, he cannot have any

objection. However, he has shown some reservation with regard to entering the names of all the heirs of deceased Khushalbhai Govanbhai. However, he has further submitted that even that can also be done without prejudice to the rights and contentions of the parties and subject to the final outcome of the Regular Civil Suit No.345 of 1996 and with an observation that merely on the basis of the entry in the revenue record, nobody can claim any right and that the entry in the revenue record does not confer any right, title and interest.

11.Mr.PM Thakkar, learned senior advocate appearing on behalf of Kankuben daughter of Khushalbhai has submitted that the entry in favour of Naginbhai in the year 1959 was mutated behind the back of the daughters of Khushalbhai and the name of son named Naginbhai only was entered into the revenue record and

the names of all the heirs of deceased Khushalbhai Govanbhai were not mutated in the revenue records of the land in question and as Kankuben and other daughters have their share in the lands in question, the said entry in favour of Naginbhai is rightly set aside and the names of all the heirs are rightly directed to be mutated in the revenue records, which is not required to be interfered with by this Court in exercise of the powers under Article 226 sand 227 of the Constitution of India. However he has submitted that if all the entries i.e. Mutation Entry Nos.2053, 7875, 8641 as well as entries in favour of all the heirs of deceased Khushalbhai Govanbhai are entered into and continued subject to the ultimate outcome of the Civil Suit No345 of 1996 pending in th Court of learned Civil Judge (SD), Surat between the parties, he cannot have any objection.

12.Mr.Asim Pandya, learned advocate appearing on behalf of the petitioners, relying upon the judgment of this Hon'ble Court in the case of **GANDABHAI DALPATBHAI PATEL VS. STATE OF GUJARAT AND OTHERS,** reported in **(2004) 7 GHJ 201** as well as in the case of **GANESHBHAI MANILAL MAYAVANSHI VS. STATE OF GUJARAT AND ORS.,** reported in **2005 (9) GHJ 634,** has submitted that the petitioners of Special Civil Application No.8372 of 2006 are bonafide purchasers of the land in question and the petitioners have purchased the said land in question by registered sale deed and unless and until the sale deed in favour of the petitioners are set aside by the competent Civil Court, necessary entry giving effect to the registered sale deed is required to be given in the revenue records. However, if there is any dispute, the said entry can be subject to the ultimate outcome of the civil suit pending before the Competent Court between the

parties. He has also further submitted that he has no objection if the entry in favour of the petitioners i.e. Mutation Entry No.8641 would be subject to the ultimate outcome of the Regular Civil Suit No.345 of 1996 pending in the court of learned Civil Judge (SD), Surat between the parties.

13.At the outset, it is required to be noted that as held by the Honourable Supreme Court and this Court in catena of judgments which is not disputed by the learned advocates appearing on behalf of the parties that the entry in the revenue records does not confer any right, title or interest merely on the basis of the Mutation Entry and the entry in the revenue record are only for the fiscal purpose for collection of revenue. It is also not in dispute that the revenue authorities have no power, authority or jurisdiction to decide the question of title while exercising the powers

under RTS proceedings. In the present case, as stated hereinabove, Regular Civil Suit No.345 of 1996 is pending in the court of learned Civil Judge (SD), Surat filed by Kankuben, daughter of Khushalbhai Govanbhai for declaration and partition and considering the rival contentions and submissions and the broad consensus between the parties, it is ordered that let Mutation Entry Nos.2053, 7875 and 8641 be continued subject to ultimate outcome of the Regular Civil Suit No.345 of 1996 and at the same time, let the entries in the revenue records the names of all the heirs of the deceased Khushalbhai Govanbhai be also mutated in the revenue records of the land in question without prejudice to the rights and contentions of the parties and subject to the ultimate outcome of the aforesaid Regular Civil Suit No.345 of 1996 pending in the court of learned Civil Judge (SD), Surat and with an observation that the entry in the revenue

record does not confer any right, title or interest only on the basis of the mutation of the names of the parties in the revenue records ipso-facto and it is ultimately for the competent Civil Court to adjudicate the disputed questions of title and necessary shall be mutated in the revenue record on the basis of the judgment and decree that may be passed by the learned Civil Judge (SD), Surat in Regular Civil Suit No.345 of 1996. The revenue authority is directed to make an additional entry in the revenue record that Regular Civil Suit No.345 of 1996 is pending in the court of learned Civil Judge (SD), Surat with regard to the land in question and all the aforesaid entries will be subject to the ultimate outcome of the Regular Civil Suit No.345 of 1996.

14.With the aforesaid observations and directions, these petitions stand disposed of. The impugned judgment and orders passed by all

the authorities below are modified to the aforesaid extent only.

(M.R.SHAH,J.)

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